

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

AVANISH KUMAR JHA, and
RAJNISH KUMAR JHA,

Defendants.

NO. CR22-049 RSM

OPPOSITION TO MOTION TO WAIVE
PRESENTENCE INVESTIGATION

The Court should deny the defense motion to waive the presentence investigation. This case is the product of a years-long investigation of international scope, and the Court should impose sentence with a full record.

DISCUSSION

By rule, the Probation Office “must” conduct a presentence investigation and prepare a presentence report (“PSR”) before the Court imposes sentence. Fed. R. Crim. P. 32(c)(1)(A). The Court may excuse this requirement only if it “finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553,” and the Court “explains its finding on the record.” Fed. R. Crim. P. 32(c)(1)(A)(ii).

1 Presentence investigations are the norm in criminal cases for good reason. The Court
 2 has the weighty task in each case of identifying a sentence that is “sufficient, but not greater
 3 than necessary, to comply with the purposes set forth” in § 3553(a). The Court also has to
 4 calculate and give due consideration to the Sentencing Guidelines advisory range. *See* 18
 5 U.S.C. § 3553(b); *Gall v. United States*, 552 U.S. 38, 49 (2007).

6 In this case, as in most cases, the Court will be best positioned to exercise its
 7 sentencing authority after a presentence investigation. This case arose out of a multi-year
 8 investigation of the defendants’ efforts to ship counterfeit, misbranded, and adulterated
 9 prescription drugs from India to the United States. The indictment contains 56 counts,
 10 reflecting the case’s factual and legal complexities. The PSR will address many facts that
 11 are not otherwise present in the record, such as the “history and characteristics” of the
 12 defendants, which the Court has to consider at sentencing. *See* Fed. R. Crim. P.
 13 32(d)(2)(A); 18 U.S.C. § 3553(a)(1). Each defendant has pleaded guilty to a serious felony
 14 that carries a prison sentence of up to 20 years and a fine of up to \$250,000. The Court will
 15 have to find the right sentence from that spectrum for each of them.

16 As for the parties, some but not all parts of their sentencing recommendations will
 17 be governed by the plea agreements. The plea agreements leave open the question of a fine,
 18 for example, and the government may recommend a fine in this case because the defendants
 19 made six-figure profits from selling counterfeit medications to undercover purchasers. *See*,
 20 e.g., Dkt. 39 at ¶ 8(m) (describing \$50,000 cash drop). But the Court would have numerous
 21 factors to consider before imposing any fine, *see* 18 U.S.C. § 3572(a), and it would benefit
 22 in this task from having a presentence investigation because the PSR will address, among
 23 other topics, the defendants’ “financial condition,” Fed. R. Crim. P. 32(d)(2)(A)(ii).

24 ***A. The Defendants Do Not Show Good Cause to Depart from the Norm***

25 The defendants’ motion does not give the Court good cause to waive the presentence
 26 investigation. This case, like virtually all criminal cases, should proceed to sentencing in
 27 the ordinary way.

1 The defendants' central argument for advancing sentencing is that they "satisfied a
 2 30-month sentence as of June 7, 2025," meaning that they are now "eligible for release."
 3 Dkt. 42 at 3. They therefore believe that sentencing should be held at the "earliest mutually
 4 available date." *Id.* at 1. But this argument depends on at least three assumptions that may
 5 turn out to be inaccurate.

- 6 • First, the defendants assume that the government will recommend 30 months
 7 of imprisonment. But the government's agreement is to cap its
 8 recommendation at the low end of the Guidelines range. The corresponding
 9 number of months depends on the Court's calculation of the Guidelines,
 10 including the defendants' criminal histories, which are not stated in the plea
 11 agreements. The number very well may be 30 months, but this is not assured.
- 12 • Second, if the government recommends 30 months, the defendants assume
 13 the Court will follow that recommendation. But, as the defendants
 14 acknowledged in their plea agreements, the Court is "not bound" by the
 15 government's recommendation. Dkt. 35 at ¶ 6; Dkt. 39 at ¶ 6.
- 16 • Third, if the Court imposes a term of 30 months, the defendants assume that
 17 they will receive "a reduction of 135 days" for "good conduct." Dkt. 42 at 3.
 18 But the defendants do not establish that credit for good time is available in
 19 these circumstances, where they served time in custody before sentencing in
 20 a foreign jurisdiction. And even if credit is available, there is not necessarily
 21 a record here to support awarding it. Good time credit is given for "exemplary
 22 compliance with institutional disciplinary regulations." 18 U.S.C.
 23 § 3624(b)(1). The defendants offer no evidence about their disciplinary
 24 record while imprisoned in Singapore, instead saying only that they "know
 25 of no facts on which BOP might deny their credit." Dkt. 42 at 4.

26 In view of these many assumptions underlying the defendants' argument, the possibility of
 27 a time-served sentence is not a good reason to advance sentencing.

CONCLUSION

The Court should deny the defendants' motion to waive the presentence investigation.

DATED: June 9, 2025

Respectfully submitted,

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